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NUMBER 80-1993

SUPREME COURT OF THE
UNITED STATES

October Term 1980

STANLEY A. LA FARGUE — Petitioner

versus

JOHN O. ST. AMANT, SHERIFF OF
ST. CHARLES PARISH, LOUISIANA,
AND ST. CHARLES HERALD — Respondents

SUPPLEMENTAL APPENDIX

IN PROPER PERSON

Stanley A. LaFargue
3127 Government Street
Post Office Box 66401
Baton Rouge, Louisiana

June 8, 1981

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STANLEY A. LA FARGUE	CIVIL ACTION
VERSUS	NO. 79-3754
JOHN O. ST. AMANT, ET AL	SECTION "E"(5)

O R D E R

The Court, having considered the plaintiff's action, the record, the applicable law, and the Magistrate's Report and Recommendation, hereby approves the said Report and Recommendation and adopts it as its opinion herein, with the following amendment and supplemental comments:

While I agree with the Magistrate's conclusion that plaintiff's complaint must be dismissed for lack of subject matter jurisdiction, I arrive there by a slightly different path. Rather than holding that plaintiff has failed to establish jurisdiction under 42 U.S.C. Sec. 1981, 1983, or 1985(3), plaintiff's complaint fails to state a claim upon which relief may be granted under those sections. Cf. Hearth, Inc. v. Department of Public Welfare, No. 77-3238 (5th Cir., filed May 6, 1980), aff'g 612 F.2d 981 (complaint failed to state a claim under fourteenth amendment). It is also apparent that plaintiff has failed to

state a claim upon which relief might possibly be granted if I were to hold that the fourteenth amendment alone provides a basis for relief for flagrant violations of constitutional rights. Id. Because plaintiff has failed to state a claim under any of the civil rights statutes, jurisdiction cannot be predicated on 28 U.S.C. Sec. 1343 (1976). Because plaintiff has failed to state a claim under a possible fourteenth amendment tort, jurisdiction cannot be predicated on either 28 U.S.C Sec. 1343 (1976) or 28 U.S.C. Sec. 1331 (1976). Plaintiff having suggested no other basis for jurisdiction to support his claim of negligent performance of official duties, his complaint must be dismissed for lack of subject matter jurisdiction.

Accordingly,

IT IS ORDERED that plaintiff's suit is dismissed.

New Orleans, Louisiana this 5th day of June, 1980.

/s/ Fred J. Cassibry
UNITED STATES DISTRICT JUDGE

DATE OF ENTRY JUN 5 1980

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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REPORT AND RECOMMENDATION

This matter was referred to the undersigned United States Magistrate pursuant to the February 1, 1980 Order of Reference signed by United States District Judge Fred J. Cassibry for purposes of serving as a Special Master, in accordance with the provisions of Rule 53, F.R.C.P. Both defendants have filed, argued and submitted motions for summary judgment, which were opposed by plaintiff.

Plaintiff brings this action under the Fourteenth Amendment to the Constitution of the United States and 28 U.S.C. Sec. 1343. 28 U.S.C. Sec. 1343 provides:

> "The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> > (3) To redress the deprivation, under color of State law, statute, ordinance, regulation, custom or usage, of any right privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing

> for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

In order for jurisdiction to exist under section 1343, a complaint must at a minimum seek recovery under 42 U.S.C. Sec. 1981, 1983 or 1985, the substantive statutes to which section 1343 relates. Campbell v. Gadsden Country District School Bd., 534 F.2d 650, 653 n.3 (5th Cir., 1976); Nouse v. Nouse, 450 F.Supp. 97, 99 (D.C. Md., 1978). Plaintiff fails to supply the Court with the appropriate statute upon which he relies for his right and remedy. However, in light of the fact that plaintiff is proceeding in proper person and is not an attorney, the Court will construe plaintiff's Fourteenth Amendment claim as one under the statutory counterpart to the Fourteenth Amendment, section 1983 and 1985(3),[1/] and it will be treated accordingly.

1/ Plaintiff could not state a cause of action under 42 U.S.C. 1981, inasmuch as that statute pertains to racial discrimination only. McDonald v. Santa Fe Trail Transportation, 427 U.S. 273, 96 S.Ct. 2574 (1976); Garner v. Giarruso, 571 F.2d 1330 (5th Cir., 1978).

The following uncontested material facts appear from the pleadings, memoranda and affidavits on file. On May 4, 1979, plaintiff delivered to the defendant, Sheriff John O. St. Amant, a writ of fiera facias issued by the 19th Judicial District Court of the Parish of East Baton Rouge, for execution on a judgment assigned to plaintiff by Dr. William Brannan. Through the alleged omissions of the defendants St. Amant and/or St. Charles Herald, the property was not timely advertised in July 1979, causing two postponements of the sale until August 29, 1979. During this period, plaintiff had secured a loan commitment to purchase the property himself, but the said commitment expired before August 29, 1979. Plaintiff therefore maintains that the omissions by defendants cost plaintiff a valuable parcel of property in St. Charles Parish.

With respect to plaintiff's claim under 42 U.S.C. 1983,[2/] the absence of jurisdiction is

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2/
42 U.S.C. 1983 provides:
1983. Civil action for deprivation of rights. Every person who under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or any person within the

manifest. In a word, plaintiff, as a judgment creditor, has no constitutional right to purchase the property against which the judgment is lodged. The negligent failure of the Sheriff to properly advertise the property, if it was negligence, did not deprive plaintiff of a right, privilege or immunity secured by the Constitution or laws of the United States. The divil rights statute providing liability for deprivation of rights under color of law imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law. The remedy for the latter type of injury must be sought in state court under traditional tort law principles. Baker v. McCollan, ____U.S._ 99 S.Ct. 2689 (1979); Williams v. Gorton, 529 F.2d 668 (9th Cir., 1976); Brainerd v. Potratz,

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2/ jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

421 F.Supp. 836 (N.D. Ill. 1976), aff'd 566 F.2d 1177 (7th Cir., 1977); Sorenson v. Zapien, 455 F.Supp. 1207 (D. Colo., 1978). It is clear that plaintiff's remedy, if any, lies in a state tort action, not a federal civil rights action. Additionally, in regard to the defendant, St. Charles Herald, it does not appear that this defendant was acting "under color of state law." Since claims brought under Sec. 1983 require a showing of state action, the claim against the St. Charles Herald is jurisdictionally improper in this regard, as well as through its failure to state a cognizable constitutional deprivation. Harris v. Hubbert, 588 F.2d 167 (5th Cir., 1979); Kellerman v. Askew, 541 F.2d 1089 (5th Cir., 1976).

Plaintiff's claim under 42 U.S.C. 1985(3) [3/] is, in effect, the only claim upon which jurisdiction might be established. It stems from his

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3/ 42 U.S.C. 1985(3) provides in pertinent part:

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws;...if one or more persons engaged therein do, or cause to be done, any act in

bald allegation that defendant John O. St. Amant and Carl Babin, the judgment debtor and owner of the subject property, engaged in "collusion" to prevent plaintiff's purchase of the property. Pretermitting the merits of such a claim, now that jurisdiction is questioned by defendants' motions, it appears yet again that jurisdictional deficiencies militate for dismissal of the complaint. The scope of Sec. 1985(3) was defined in McLellan v. Mississippi Power and Light Company, 545 F.2d 919, 928 (5th Cir., 1977):

> "Our analysis in this subsection centers on the following sentence from the Griffin opinion[4/]: 'The language requiring intent to deprive of equal protection or equal privileges and immunities means that there must be some racial

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3/ furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

4/ Griffin v. Breckinridge, 403 U.S. 88, 102, 91 St. Ct. 1790, 1798 (1971).

> or perhaps otherwise class-based invidiously discriminatory animus behind conspirators' action.' From this statement, only two assertions can be made with certainty. First, class-based bias must be alleged. Second, racial discrimination is encompassed by the statute." (Emphasis supplied).

Inasmuch as plaintiff has failed to allege any class-based bias and in view of the restrictive attitude taken by this Circuit to the confection of novel classes, see McLellan v. Mississippi Power and Light, supra at 928, plaintiff's claim under 42 U.S.C. Sec. 1985(3) fails to meet the threshold jurisdictional requirements. Furthermore, plaintiff in his deposition (Record Document 21, pages 82, 83) admits that he knows of no specific acts of collusion on the part of defendants, rather that he just felt that it existed. Plaintiff's mere conclusions are insufficient to support a claim.

It should be noted that, although defendants' motions seek summary judgment on the issues herein, it is proper for a federal court to determine its jurisdiction at any time and such a determination may be made sua sponte. Rule 12(h)(3), F.R.C.P. Oswalt v. Scripto, Inc., ___F.2d _____(5th Cir. 1980) (Slip Opinion, May 1, 1980);

Live and Let Live, Inc. v. Carlsberg Mobile Home Properties, Ltd. - '73, 592 F.2d 846 (5th Cir., 1979); Hester v. Rizzo, 454 F.Supp. 537 (D.C. La., 1978). Without specifically deciding the merits of the motions for summary judgment herein, it would appear that, had jurisdiction been established, summary judgment would be appropriate inasmuch as plaintiff has failed to respond by affidavit to the motions for summary judgment, as required by Rule 56(e), F.R.C.P. and he has failed to submit affidavits stating the reasons why he cannot respond to the motion by affidavit, as required by Rule 56(f), F.R.C.P.. However, since jurisdiction is absent, the motions for summary judgment are not entertained.

For all the foregoing reasons, it is recommended that plaintiff's suit be DISMISSED for lack of jurisdiction over the subject matter.

New Orleans, Louisiana, May 6, 1980.

/s/ Marcel Livaudais, Jr.
MARCEL LIVAUDAIS, JR.
United States Magistrate